SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application for a Stay of Arbitration of RAPHAEL BAROUCH ELKAIM, BINYOMIN HALPERN, BENJAMIN SCHONBERG, and JACOB SCHONBERG,	:	Index No.
Petitioners,	:	**PETITION TO STAY ARBITRATION**
- against -	:	
WILSON SONSINI GOODRICH & ROSATI, P.C.,	:	
Respondent.	:	

Petitioners Raphael Barouch Elkaim ("Elkaim"), Binyomin Halpern ("Halpern"), Benjamin Schonberg ("Benjamin"), and Jacob Schonberg ("Jacob") (collectively, "Petitioners"), by their attorneys, allege as follows upon knowledge as to themselves and their acts and as to all other matters upon information and belief:

1. On or about March 14, 2019 and March 15, 2019, Petitioners received a Demand for Arbitration (the "Demand") (a copy of which is attached as **Exhibit A**), in which respondent Wilson Sonsini Goodrich & Rosati, P.C. ("Respondent" or "WSGR"), an international law firm, demanded an arbitration in New York County before JAMS, an organization that provides arbitral services, against Petitioners for breach of contract and accounts stated related to legal services allegedly provided by Respondent to Petitioners.

2. Respondent based its demand for arbitration on a written engagement agreement (the "Engagement Agreement") between Respondent and Petitioners (a copy of which is attached as **Exhibit B**), which contains an arbitration provision.

3. Arbitration of Respondent's claims against Petitioners should be permanently stayed for two reasons.

4. First, Respondents fraudulently induced Petitioners to enter into the Engagement Agreement, including specifically with respect to the Engagement Agreement's arbitration provision.

5. Second, the Engagement Agreement's arbitration provision states that arbitration shall take place before JAMS or the American Arbitration Association (the "AAA"), but does not vest the choice between the two entities in Respondent or in the party seeking arbitration. As Petitioners have not agreed to arbitration before JAMS, and would prefer any arbitration to take place before the AAA, arbitration of Respondent's claims against Petitioners before JAMS should be permanently stayed.

Respondents' Fraud

6. From the very beginning of their relationship, Respondent has sought to enrich itself at the expense of Petitioners and Respondent did not scruple to use fraud to do so.

7. Petitioners, represented by Elkaim and Benjamin, first met with Respondent on April 25, 2018. At that meeting, Respondent was represented by two law firm partners at Respondent, Morris J. Fodeman ("Fodeman") and Jessica L. Margolis ("Margolis").

8. At that meeting, Respondent and Petitioners spend many hours discussing an arbitration provision invoked by a federal court against Petitioners and how to deal with the arbitration provision in any further litigation.

9. During the meeting, Elkaim separately spoke with Fodeman about Respondent's Engagement Agreement.

10. Fodeman informed Elkaim that the Engagement Agreement contained an arbitration clause.

11. Elkaim asked Fodeman how he could advise Petitioners to sign the Engagement Agreement with an arbitration provision after they had just spent many hours discussing how to address a different arbitration provision that had caused much trouble for Petitioners in a federal action.

12. Fodeman replied that all attorneys in New York insert arbitration provisions in their engagement agreements so as to avoid putting disputes with their clients on the public record.

13. Petitioners relied upon Fodeman's false representation in agreement to enter into the arbitration provision in particular and the Engagement Agreement in general. Had Petitioners been aware that Fodeman's description of the universal practice of New York attorneys to include arbitration provisions in their engagement letters was false, they would not have agreed to the arbitration provision or entered into the Engagement Agreement.

14. Petitioners have since learned that many New York attorneys do not include arbitration provisions in their engagement agreements with clients.

15. This fraud and its purpose – to hide Respondent's billing shenanigans from the public record – were of a piece with Respondent's actions in inducing Petitioners to enter into the Engagement Agreement in general and their subsequent misrepresentations about the cost of their legal services.

16. The Engagement Agreement required a $100,000 initial retainer payment. The Engagement Agreement stated: "It is contemplated that this Initial Retainer will be used to cover fees and costs incurred by WSGR for approximately the first month of the engagement prior to

the filing of any lawsuit. During this first stage of the engagement, WSGR will assess the various factual and legal issues relevant to this Dispute and make recommendations to Clients concerning the viability of a potential lawsuit and the appropriate forum for any lawsuit."

17. On April 27, 2018, Respondent began performing billable work in connection with the matter.

18. On May 6, 2018, Respondent sent Petitioners the Engagement Agreement for their signatures.

19. Respondent continued working through May 22, 2018.

20. From May 23, 2018 through May 30, 2018, Respondent ceased their work on the matter because it had not yet received the full initial retainer payment.

21. On May 30, 2018, Respondent urged Petitioners to return signed copies of the Engagement Agreement.

22. On June 3, 2018, Petitioners sent Respondent the Engagement Agreement's signature page with signatures by Elkaim, Benjamin, and Jacob.

23. On June 11, 2018, Respondent met with Petitioners, represented by Elkaim, Halpern, and Benjamin, to present their legal research and analysis.

24. At that meeting, Halpern spoke with Fodeman individually.

25. Halpern informed Fodeman that, because Fodeman had assured Petitioners at the outset that Respondent would try to bill minimally and not have too many attorneys work on the matter and because Petitioners did not want to expend a lot of funds before the matter was actually at the litigation stage in court, Respondent should not perform billable work in excess of $200,000 until Fodeman gave Petitioners a proper estimate of any additional work going forward.

26. On June 25, 2018, Petitioners received their ***first*** bill of the entire engagement, covering work done through the month of May 2018. The bill listed a total charge of $162,110.50.

27. Thus, at the end of May 2018, while Respondent had been urging Petitioners to sign an Engagement Letter that expressly contemplated only $100,000 for the legal work, Respondent was already aware that its far-from-completed work had already significantly exceeded that figure.

28. On July 16, 2018, Fodeman sent an email requesting that Halpern return a signed copy of the Engagement Letter.

29. On July 23, 2018, Halpern sent Respondent a copy of the Engagement Letter with his signature.

30. On July 30, 2018, Respondent sent Petitioners a second bill, covering work done in June 2018. This bill listed charges for $265,304.16 for work done in June 2018.

31. Thus, when Respondent urged Halpern to sign, it was aware that that legal fees had reached more than $400,000 (and possibly more than $500,000), well in excess of Halpern's requested limit of $200,000.

32. Respondent stopped working on Petitioners' legal matter after July 30, 2018, because it had not received payment.

33. On August 30, 2018, Respondent sent petitioners a third bill, covering work done in June 2018, for $155,370.74. The bill noted that Respondent had used the $100,000 initial retainer to cover some of the total costs.

34. Thus, in total, Respondent racked up $582,785.40 charges for legal services supposedly performed for Petitioners, after representing to them first that the charges would be approximately $100,000 and then that the charges would not exceed $200,000.

35. In return for more than half-a-million dollars in legal fees, the only legal work product received by Petitioners from Respondent was a 24-page PowerPoint presentation containing an outline of their legal analysis.

36. In signing the Engagement Agreement, Petitioners reasonably relied upon Respondent's false representations about the amount of legal work it would perform and the cost that would be incurred. But for those false representations, Petitions would not have signed the Engagement Agreement.

37. For the foregoing reasons, the arbitration provision in the Engagement Agreement is not valid. But for the false representations, upon which Petitioners – who are foreigners – reasonably relied, Petitioners would not have entered into the Engagement Agreement in general and the arbitration provision in particular.

Petitioner's Demand for Arbitration Before JAMS

38. The Engagement Agreement contains the following arbitration provision: "If for some reason we were not able to resolve any dispute ourselves, then WSGR and Clients [that is, Petitioners] agree that all disputes or claims between us of any nature whatsoever shall be resolved by binding arbitration before the American Arbitration Association or JAMS in the County of New York."

39. The arbitration provision does not identify JAMS as the proper arbitral body; it identifies two possible arbitral bodies.

40. The arbitration provision does not vest the choice of arbitral body in Respondent or in the party seeking arbitration.

41. As such, any choice between the two choices – the AAA and JAMS – must be agreed-upon by the parties.

42. Respondent's Demand seeks arbitration of its claims before JAMS, but Petitioners have not, and do not, agree to the arbitration of Respondent's claims before JAMS.

43. Petitioners prefer that any arbitration of Respondent's claims – and, for the reasons stated above, these claims are not arbitrable – take place before the AAA.

44. Accordingly, the arbitration of Respondent's claims against Petitioners before JAMS should be permanently stayed.

The Demand's Lack of Requisite Notice of the 20-day Period for Applying for a Stay

45. Respondent's Demand includes no notice of the 20-day period for applying for a stay of arbitration, as CPLR 7503(c) requires.

46. Accordingly, there is no such deadline for Petitioner's application for a stay of arbitration and Petitioner's application is timely. *See Matter of State of N.Y.—Unified Ct. Sys. V. Dist. Council 37*, 121 A.D.3d 497, 497 (1st Dept. 2014) ("The second petition to stay arbitration was not time-barred, although it was served five months after respondents had made a demand for arbitration, because the demand failed to include the requisite notice of the 20-day period for applying for a stay."); *Scanomat A/S v. Boies, Schiller & Flexner LLP*, 54 Misc. 3d 1215(A), 2017 N.Y. Misc. LEXIS 458, at *8-9 (Sup. Ct. N.Y. County 2017) ("Here, it is undisputed that petitioner did not move to stay arbitration within the 20-day period. However, the petition to stay arbitration was not time-barred because respondent failed to include in the DFA the requisite statutory language warning petitioner that it had 20 days in which to move for such a stay.").

WHEREFORE, Petitioners respectfully request judgment as follows:

A. An order, pursuant to CPLR 7503, permanently staying the arbitration of Respondent's claims against Petitioners identified in Respondents' Demand for Arbitration;

B. An order, pursuant to CPLR 7503, permanently staying the arbitration before JAMS of Respondent's claims against Petitioners identified in Respondents' Demand for Arbitration; and

C. Such other and further relief as the Court deems just and proper.

Dated: April 16, 2019

BRONSTEIN, GEWIRTZ & GROSSMAN, LLC

By: /s/ Yitzchak Eliezer Soloveichik
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Attorneys for Petitioners

VERIFICATION

Raphael Barouch Elkaim deposes and says:

I am a named petitioner in the captioned action. I have read the foregoing Petition, know the contents thereof, and the same is true to my knowledge, except as to matters therein stated to be upon information and belief, and as to those matters I believe same to be true based on documents I have reviewed and my investigation of the facts concerning this matter.

I affirm this 16th day of April 2019, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Raphael Barouch Elkaim